

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Clams 29-33, 37-60 are presently active in this application; Claims 31-33 and 41-43 are amended and claims 44-60 added by the present amendment.

In the outstanding Office Action the abstract was objected to. Claims 31 and 41 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Kamiguchi et al. (U.S. Patent 6,303,218, herein referred to as “Kamiguchi”) in view of Gill et al. (U.S. Patent 5,701,222, herein referred to as “Gill”) and rejected under the doctrine of obviousness-type double patenting as being unpatentable over Fukuzawa et al. (U.S. Patent 6,338,899, herein referred to as “Fukuzawa”) in view of Gill and copending application number 09/944,075 in view of Gill. Claims 31-33 and 41-43 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 31, 33, 41 and 43 were rejected under 35 U.S.C. §102(b) as being anticipated by Gill. Claims 32 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gill and further in view of Otsuka et al. (U.S. Patent 4,789,910, herein referred to as “Otsuka”), Claims 31, 33, 41 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kamiguchi in view of Gill, Claims 32 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kamiguchi in view of Gill and further in view of Otsuka.

Applicants acknowledge the outstanding grounds for rejection based on obviousness-type double patenting. Applicants respectfully request that these grounds for rejection, and the requirement to file a terminal disclaimer, be held in abeyance under 37 CFR §1.111 (b) until such time as allowable subject matter is indicated.

In response to the objection to the abstract, a new abstract consistent with MPEP §608.01(b) is submitted herewith. Accordingly, the objection to the abstract is believed to have been overcome.

In response to the rejection 35 U.S.C. §112, second paragraph, the relative expression 'high' has been deleted from the claims, and accordingly, this ground for rejection is believed to have been overcome.

In response to the outstanding rejection of claims 31, 33, 41 and 43 under 35 U.S.C. §102(b) as anticipated by Gill, claims 31 and 41 have been amended to recite that the first ferromagnetic layer has a film thickness between 0.5 nanometers and 4.5 nanometers. This feature is not disclosed by Gill, and therefore, it is respectfully submitted that the outstanding rejection under 35 U.S.C. §102(b) is believed to have been overcome.

In response to the several grounds for rejection relying on the Kamiguchi patent, it is noted that these grounds for rejection rely on 35 U.S.C. §102(e)/103(c). However, Kamiguchi was subject to an obligation of assignment to the assignee of the present application, i.e., Kabushiki Kaisha Toshiba, at the time the present invention was made. Accordingly, it is respectfully submitted that Kamiguchi is disqualified as prior art under 35 U.S.C. §102(e)/103(c).

Also submitted herewith are new claims 44-60 which define applicants' invention in varying scope. Support for the newly submitted claims is believed to be found in the original disclosure and claims, and the newly submitted claims are not believed to raise a question of new matter. Examination on the merits of the newly submitted claims is believed to be in order and is respectfully requested.

Accordingly, in view of the present amendment, a further Official Action on the

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merits is believed to be in order and is respectfully requested taking into consideration the  
above comments and the present claim amendments.

Respectfully submitted,

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